would not be in the position for which he now finds himself.

There was a Rule 60(b) motion to the previous judgment, that alleged misconduct by Defendants did raise issue of misrepresentation of facts did state that their legitimate non-discriminatory reason was false, Plaintiff had made a prima facie case in that proceeding before it was discovered that the non-discriminatory was false. The Defendants withheld evidence of material facts that were alleged in the Rule 60 (b) motion.

On September 10, 2001, Plaintiff discovered new evidence and Defendants misconduct. Plaintiff commenced to file Rule 60 (b) motion on September 11, 2001. In the motion, Plaintiff did state that there is direct evidence that Plaintiff had been and continues to be treated differently than another officer of which gives the other officer's name, tax number, and trial case number for identification purposes, do state that the Defendants' "Zero Tolerance Policy" is false, and is not non discriminatory if not applied to another in the exact same situation. Plaintiff made a discovery request for this information during discovery, and the Defendants intentionally withheld it from Plaintiff. The District Court stated that because of the Defendants "Zero Tolerance Policy" as evidence that of non-discriminatory reason was true. The evidence of another officer in the same situation, and does not suffer the same faith as Plaintiff is direct evidence of a genuine issue regarding whether Plaintiff is being treated differently. Plaintiff did state that he is being treated differently, and unequally not just to white

officers as stated in #20 of the complaint. The Defendants do not have a non-discriminatory reason for this. The Defendants admit in their sworn "Memorandum of Law" in which they state "Plaintiff failed to show that his punishment was different from that of any other Police Officer found guilty of disciplinary charges for use and possession of narcotics." Defendants state that Plaintiff does not point to a single instance where the zero tolerance policy was not applied, and Plaintiff's assertion is conclusory. Defendants state "However it was the drug-related charges, and the NYPD's zero tolerance policy which resulted in Plaintiff's dismissal." The name of the other officer in the Rule 60 motion is direct evidence that the Defendants intentionally presented false evidence to the Court through misrepresentation of the facts and evidence in this case in order that the Court use said evidence to unduly influence the Court to suggest that the Defendants have met their burden of proof. Defendants withheld evidence of material fact for a genuine issue of material fact for a trial.

There was a Rule 60(b) motion to the previous judgment, that alleged misconduct by Defendants; and that did raise issue of misrepresentation of facts, and did state that their legitimate non-discriminatory reason was false; Plaintiff had made a prima facie case in the proceeding before it was discovered that the non-discriminatory reason was false. The Defendants intentionally withheld evidence of material facts, of which were alleged in the Rule 60(b) motion.

Plaintiff tried to deliver motion to the District Court by Hand to the Clerk's Office, as explained in the letter that accompanied the motion. The letter stated that Plaintiff made attempts to file his motion, but was delayed, because the Court had closed due to the attack on the World Trade Center on September 11, 2001. The Federal Court system in the Manhattan section of New York City was closed that day and the days to follow. Plaintiff had to have the motion delivered by Federal Express. Federal Express could not deliver the motion on the next day, because the District Court was closed as stated by a letter from that company regarding delivery confirmation. Dated September 18, 2001, stating that they could not make delivery of the package until September 20, 2001 because of the tragedy of September 11, 2001. On September 24, 2001, the District Court denied Plaintiff's Rule 60(b) motion. The District Court stated that Plaintiff's motion was filed a year after the Court's judgment. This statement is in conflict with the Court's own orders for the whole Court system in the Southern District of New York. The District issued an extension of all Court papers for deadlines due to the World Trade Center Attacks. This extension was granted from September 10, 2001 to September 26, 2001, a 16-day extension. The Court, however, denied Plaintiff's motion on September 24, 2001, two full days before the Court ordered deadline of September 26, 2001 (Miscellaneous Docket—Ordered by Document No. M10-468—Judge Mulkasey). Under statute, if motion is made within a year, it is a pending case in the Court for a Rule 60(b) motion. Plaintiff's

Rule 60(b) motion was never adjudicated on any of the merits and pertinent new facts. This is in conflict with Pioneer Inv. Servs. Co. v. Brunswick Assoc. 507 U.S. 380. holding on delays in case action, this Court states "We conclude that determination is bottom on an equitable one, taking account of all relevant circumstances.....the reason for delay including whether it was in reasonable control of the movant and whether the movant acted in good faith.

Plaintiff appealed the District Court's denial of Rule 60(b) motion date October 16, 2001. On January 2002, Plaintiff filed motion to dismiss Rule 60(b) appeal motion without prejudice. On February 6, 2002, the Court of Appeal granted the Plaintiff's motion. On October 14, 2005, Plaintiff filed motion to Reinstate Rule 60(b) Motion to the Appeals Court.

The Appeals Court are in error in fact and law. Plaintiff did, in fact, file to 97 civ 1908 on October 16, 2000; Court of Appeals case #009438.

Plaintiff's appeal to the judgment in 97civ1908 was dismissed on February 5, 2001 for failure to file Appellant brief in a timely manner. On February 15, 2001, Plaintiff filed motions to reinstate appeal and request for appointment Counsel for representation in the appeal. On May 24, 2001, the Court of Appeals denied Plaintiff's motions, because it states, the appeal lacks an arguable basis in fact or law. On June 6, 2001, the Court of Appeals denied Plaintiff's motion for panel rehearing.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant a Writ of Certiorari, and either summary reverse or set the case for full briefing and oral argument.

Respectfully Submitted,

Frank Bettis
335 Edgecombe Avenue, Apt. 5A
New York, New York 10031
(212) 690-4705

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED AND MAY NOT BE CITED AS PRECREDENTIAL AUTHORITH TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN THE RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 28th day of April, two thousand five.

PRESENT: HON. AMALYA L. KEARSE,
HON. DENNIS JACOBS,
HON. GUIDO CALABRESI,
Circuit Judges.

X

Frank Bettis

Plaintiff-Appellant,

-v- 04-4979

Raymond Kelly, as Commissioner of the New York City Police Department, Bernard Kerik, as former Commissioner of the New York City Police Department, William Bratton, as former Commissioner of the City of New York Police Department, Howard Safir, as former Commissioner of the New York City Police Department, City of New York.

Defendants-Appellees.

X

APPEARING FOR APPELLANT: (On Submission) **Frank Bettis,** New York, NY

APPEARING FOR APPELLEES: (On Submission) **Michael A. Cardozo,** Corporation Counsel of the City of New York, **Pamela Seider Dologow, John Hogrogian,** Assistant Corporation Counsel of the City of New York, New York, NY

Appeal from the United States District Court for the Southern District of New York (Mukasey, C.J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court is **AFFIRMED.**

Frank Bettis appeals an August 9, 2004 judgment of the United States District Court for the Southern District of New York (Mukasey, C.J.), dismissing his termination of employment claims under the doctrine of res judicata. We assume that the parties are familiar with the facts, the procedural history, and the scope of the issues presented on appeal.

Bettis previously sued the City of New York, and various Commissioners of the New York City police department, in connection with the termination. See Bettis v.

Safir, No. 97-cv-1908, 2000 U.S. District LEXIS 13285 (S.D.N.Y. September 15, 2000). The claims were dismissed On summary judgment, id. at*1, and no appeal was taken, see Bettis v. Kelly, No. 02-cv-104, 2004 U.S. District LEXIS 15463, AT *2 (S.D.N.Y. Aug. 4, 2004). As such, the district court correctly held that the doctrine of res judicata bars Bettis' current lawsuit. "[A] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in the action." Allen v. McCurry, 449 U.S. 90, 94 (1980); see also Pike v. Freeman, 226 F. 3d 78, 91 (2d Cir. 2001) ("To prove that a claim is precluded under this doctrine, 'a party must show that (1) the previous action involved an adjudication on the merits; (2) the previous action involved the [parties] or those in privity with them; [and] (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action.") Monahan v. New York City Dep't of Corr., 214 F. 3d 275, 284-85 (2d Cir. 2000) (alterations in original).

Bettis contends that: (i) his present claims are based on different legal theories; and (ii) the appellees inappropriately withheld information during the prior litigation. However, res judicata bars relitigation of issues that "could have been raised" in a prior action. Allen, 449 U.S. at 94. Similarly, any allegations of misconduct in the prior litigation should have been raised in an appropriate challenge to that judgment. See Fed. R. Civ. P. 60 (b) (court may "relieve a party or a party's legal representative from a final judgment, order, or proceeding" resulting from "fraud . . . , misrepresentation, or other misconduct of an adverse party").

For the reason set forth above, the judgment of the district court is hereby **AFFIRMED.**

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK
BY:

_____

Lucille Carr, Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK BETTIS,

Plaintiff,

-against-

RAYMOND KELLY, as Commissioner of the New York City Police Department, BERNARD KERIK, As former Commissioner of the New York City Police Department, HOWARD SAFIR, as former Commissioner of the New York City Police Department, WILLIAM BRATTON, as former Commissioner of the New York City Police Department, and the City of New York,

Defendant.

02 Civ. 104 (MBM)
OPINION AND ORDER

APPEARANCES:

FRANK BETTIS
(Plaintiff pro se)
335 Edgecombe Avenue
New York, New York 10031

MICHAEL A CARDOZO, ESQ.
Corporation Counsel of the
City of New York
ISAAC KLEPFISH, ESQ.
Assistant Corporation Counsel
(Attorneys for defendants)
100 Church Street
New York, NY 10008
(212) 788-0897

MICHAEL B. MUKASEY, U.S.D.J.

In a prior action in this court, styled Bettis v. Safir, 97 Civ. 1908, plaintiff sued the New York City Police Department ("NYPD") and former Commissioner William Bratton and Howard Safir, and the City of New York, for Intentional discrimination based on race under 42 U.S.C. § 1981 (1994) and Title VI, 42 U.S.C. § 2000 (d) (1994). He filed also pendent state-law claims based on the same alleged Discrimination. The claims arose from his dismissal from the NYPD after he was found guilty of ingesting cocaine after a departmental trial. In an Opinion and Order dated September 14, 2000, I granted the defendants' motion for Summary judgment dismissing the federal claims, declined to exercise pendent jurisdiction over the state-law claims and dismissed those claims without prejudice. Battis took no appeal from that decision.

In the case now before the court, filed on January 7, 2002, Bettis asserts again that his dismissal by The NYPD resulted from race discrimination. Defendants Have moved to dismiss based on res judicata. For the reasons explained briefly below, the motion is granted.

The facts underlying the initial action, which are the same as those underlying this one, are described as Follows in this court's September 14, 2000, opinion:

> Battis is an African-American who was employed by The NYPD as a police officer from August 1983 to March 1994. In April 1993, Bettis underwent a drug Test under the NYPD's random drug testing program. He was tested positive for cocaine. At Bettis's disciplinary hearing, he did not contest the Randomness of his selection for testing. Rather, he argued that he had tested positive because he had

> ingested Tylenol 4 wit codeine following a tooth extraction the day before the drug test. Bettis presented several Tylenol tablets, which he claimed were from the same container as the ones he took before his drug test, and test results finding that the tablets contained cocaine. The NYPD presented expert testimony that the tablets had been tampered with after they were manufactured. The parties stipulated that Bettis' pharmacist would have testified that he had no knowledge of any tampering. As a result of the hearing, an Assistant Deputy Commissioner for Trials recommended finding Bettis guilty, and Commissioner Bratton fired him in March 1994. Bettis challenged his termination under New York Civil Practice Law and Rules Article 78. The Appellate Division affirmed. Bettis v. Braxton, 226 A.D. 2d 281, 281-82, 641 N.Y.S. 2d 631 (1st Dep't 1996).

Bettis v. Safir, 97 Civ. 1908, 2000 U. S. Dist. LEXIS 13285, at *2-*3 (S.D.N.Y. Sept. 14, 2000) (Citations omitted). Although Bettis challenged the uniformity of the NYPD's response to drug allegations against its officers, the evidence Showed "that from august 1994 to October 1999, every Officer who was charged with narcotics use either resigned, Retired or was fired – with the exception of four officers, Three of whom were non-white." Id. at *6-*7.

It has long been the rule in federal courts that a final judgment on the merits of an action bars the parties Or their privies from relitigating issues that either "were or could have been raised in that action." Allen v. McCurry, 449 U. S. 90, 94 (1980). As noted, Bettis' complaint in the Case at bar challenges the same dismissal on the same Grounds as his earlier one. Bettis opposes application of res judicata here by arguing that defendants committed two frauds that undermine the validity of the first judgment. The

First allegedly involved altering the charges against him in His disciplinary hearing in such a way as to prevent proper Review before the Appellate Division when he appealed his Dismissal. Supplement to Answer to Defendants' Motion for Dismissal ("Supplement") at 2 – 4. The second allegedly involved failure to disclose during discovery in the prior Action before this court the case of one officer, Jeanette Alvarado (supplement at 5), whom plaintiff claims was Found after a hearing to have ingested cocaine and was not dismissed from the NYPD. Second Supplement to Defendants' Motion for Dismissal of Complaint, at 5.

The first of these alleged frauds by Defendants, involving alteration of the charges against Bettis at his disciplinary hearing, has nothing to do with the Prior action in this court, and could not undermine the earlier Judgment on any ground, res judicata or otherwise.

As the second, if Bettis seeks to avoid the earlier judgment based on defendants' alleged fraud, the Way to have done that was by motion in that earlier case Pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure, which authorizes relief from a judgment resulting From "fraud . . . or other misconduct." Fed. R. Civ. P. 60 (b) (3). However, such a motion must be made within one year After the judgment was entered, unless the fraud is sufficiently egregious to be considered a "fraud upon the Court." In which event the court retains authority to set aside the judgment. Even if this action were to be treated as A motion pursuant to Rule 60 (b) in the earlier case, it would Not be timely because it was filed in January 2002, the case having been dismissed in September 2000.

Moreover, even assuming without deciding That the subject matter of the second alleged fraud, accepted As true for purposes of this discussion – concealment of one Disciplinary case against a Hispanic-surnamed female police

Officer who allegedly was found to have ingested cocaine but was not dismissed from the NYPD – could be regarded as a "Fraud upon the court" sufficient to avoid the limitations Period of Rule 60 (b), and the disciplinary case itself were Considered as evidence, it would not change the outcome Here because it could not have changed the overwhelming Statistical evidence, cited above, showing that charges of Drug use was generally a career-ending event at the NYPD. Thus, it would in no way have suggested that the decision to Dismiss Bettis was racially motivated.

For the above reasons, the complaint is dismissed.

SO ORDERED

Dated: August 4, 2004
New York, New York

Michael B. Mukasey
U. S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THRUGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK, NEW YORK 10007

Roseann B. MacKechnie
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 17th day of August two thousand five.

Bettis v. Kelly 04-4979-cv

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Frank Bettis. Upon consideration by the panel decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to my other judge that heard the appeal and that no such judge has requested that a vote to be taken thereon.

For the Court,
Roseann B. MacKechnie, Clerk

By: _____
Motion Staff Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

FRANK BETTIS, **INDEX NO. 97 Civ 1908**
Plaintiff, **(MBM)**

BY HAND

-against-

HOWARD SAFIR, et.al.
Defendants,

---X

Plaintiff, Pro Se.

Hon. Michael B. Mukasey
Chief Judge of the Southern District of
The United States Southern District Court of New York
500 Pearl Street
New York, New York 10007

Dear Judge Mukasey:

Due to the recent tragedy visited upon New York's World Trade Centers, the attached Motion could not be delivered in a timely fashion to meet the Court's deadline. On Wednesday, September 12th, I attempted to deliver this Motion, but was told the Court's would not be open until further notice maybe Friday. I made a second attempt on Friday, September 14th, and was again told that the Court was closed, but that it would be closed indefinitely. As this is the case, I, now, ask that the Court accept this Motion.

I thank you in advance for your understanding and your foresight, as this lateness was beyond my control.

Sincerely,

Frank Bettis
335 Edgecombe Avenue
New York, New York 10031
(212) 690-4705

cc: Ms Lisa Grumet (LG61110)
Assistant Corporation Counsel
100 Church Street, Room 3-190
New York, New York 10007
(212) 788-1165

Dated: New York New York
September 14, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

FRANK BETTIS, **INDEX NO. 97 Civ 1908**
Plaintiff, **(MBM)**

BY HAND &
-against- **VIA FEDERAL EXPRESS**

HOWARD SAFIR, et.al.
Defendants.

X

Plaintiff, Pro Se.

Pursuant to Rule 60 (B) (2) newly discovered evidence and Rule 60 (B) (3) misconduct by defendant of the federal Rules of Civil Procedure, Plaintiff Pro Se makes this motion for Relief from Judgment and Order.

The nature and substance of Plaintiffs motion are the following facts:

(1) Newly discovered evidence that Plaintiff did not have at the time of Plaintiff's response to Defendant's motion for summary judgment. Plaintiff did not receive this information until September 10, 2001.

(2) Defendants have committed misconduct by intentionally withholding this information from discovery of which supports Plaintiffs cause of action.

In addition to Plaintiff's claim that he was treated differently than white employees of the NYPD, Plaintiff requests relief from judgment based on newly discovered evidence and Defendant's misconduct of withholding evidence from discovery. Plaintiff did state and allege

that he was being treated differently than other non-African American officers who have not been terminated, in spite of such positive test results or refusal to submit to drug test based on Plaintiff's race; Non-African American does include all non-white officers (all considered minorities), of whom would include Hispanic officers. Plaintiff's statement in #20 of Plaintiff's Complaint is not just specific to white officers. Plaintiff's states that this was intentional discrimination based on race in violation of Title VI.

Police Officer Jeanette Alvarado Tax #874128, Case #61932 who is Hispanic by race, was subjected to a department drug test. Officer did in fact, test positive (+) on the department drug test, a result that was, in fact, a non-false positive (+). Officer did, in fact, face charges in the Department Trial Room. Officer, like the Plaintiff, did not contest the department drug test, stated that she had unknowingly taken illegal drugs and was not responsible for the drug test results. The charges against the officer were dismissed, despite the fact that there was an uncontested non-false positive (+) test result that could support a find of guilty.

This case contains factual information and direct evidence that Plaintiff, as an African American, based upon race, is being treated unequal and differently than other non-African Americans, not just whites in particular who have tested non-false positive on a department drug test and was not dismissed. The department does not have a non-discriminatory reason for this action.

Being guilty on drug-related offenses are based on a non-false positive drug test. Both officers had the exact non-false positive test results. Plaintiff was found guilty, Officer Alvarado, however, was not. Being found guilty

is discriminatory when exact and equal test results do not conclude with the same outcome. This case is direct evidence that the department's Zero Tolerance Policy is false and discriminatory. This Officer, like Plaintiff did in fact, has illegal drugs in her system unknowingly, and was not dismissed yet Plaintiff was dismissed.

Defendant stated that there were only 5 cases that were drug related that went to the department Trial Room where the officers were found not guilty or the cases were dismissed based on the fact that the department drug tests were found to be false positives or the test for certain illegal drugs were below the cut-off level that would legally indicate a positive test result. The Defendant stated that its records only go back to 1990, under the system it has in place. Defendant under civil rights lass are required to keep certain records for at least 20 years; Defendant did not allow itself to go back to 1988 for this record and others. It occurred on 5 years before Plaintiff's case. Defendant did have this information on this case, but did not turn it over to the Plaintiff's attorney or to the Plaintiff himself.

Defendant did, in fact, intentionally withhold this case from discovery to prevent Plaintiff from showing he has, in fact, suffered from intentional racial discrimination, being treated different and unequal in violation of Title VI as stated in #20 of the Complaint.

Defendant did, in fact, withhold this factual information to prevent Plaintiff from showing this Court and any subsequent Appeal Court facts that he has suffered intentional discrimination and being treated different and unequal in violation of Title VI. This action by Defendant is a violation of Federal Rule 26 on discovery; this action by Defendant prevented Plaintiff

from showing these facts in response to Defendant's Motion for Summary Judgment under Federal Rule 56.

In summary, Plaintiff has shown facts that he has been selected on the basis of his race to be charged and found guilty on an official charge of Refusing to Submit to Drug Test; a charge that he never faced in the Department Trial Room, never received notice of such charge. This is a clear violation of New York State Civil Service law §75, and intentional racial discrimination. This action by NYPD is related to its action in treating Plaintiff different and unequal based on Plaintiff's race as the facts show in the new evidence presented and as stated in #20 of the Complaint. Reeves v. Sanderson Plumbing Products, U. S. Supreme Court Case #99-536.

A civil service employee may not be removed without compliance with §75 requiring specific written charges of misconduct. Crosson v. Golar 1 Dept. 1974 45 A.D. 2d 747.359 N.Y.S. 2d 301. Grant v. Hazelett Strip Casting Corp. 880 R. 2d 1564, 1569 EPD 39. 245 (2 Cir. 1989). EEOC v. Alton Packaging Corp., 901 F. 2d 920, 924, 53, EPD 39. 932 (11th Cir. 1990).

Plaintiff also in this motion requests that the following be added to the record for the Court Review. These documents that Plaintiff left out of the record that refutes facts in Defendant's motion for summary judgment; these show that the Defendant's decision was not reasonable, and not in accordance with the law. Plaintiff makes this request under Federal Rule 60 (A).

The stipulated fact that the pharmacist who dispensed the medication would state that they have no knowledge or information of any tampering, etc.

The pharmacist could not have any knowledge or information to any tampering of the medication with cocaine unless such medication was visible seen and observed under ultraviolet light (special light) to give identification of the presence of such substance. In accordance with the USP (the United States Pharmacopoeia) special light is needed to have knowledge and information of the presence of cocaine. All stated information is of public knowledge and appears in the medical journal, the United States Pharmacopoeia (USP). (see attached). There is nothing in the record that states pharmacist used this established method as stated in the USP for cocaine.

The NYPD expert, William Closson, in addition to what he stated about Tylenol #4. He stated that there was no test he could have performed to make a determination as to whether or not the Plaintiff's evidence had been tampered with. Closson also stated that he could visually inspect evidence to make such of the determination. Closson stated that he did not use any special light, glasses, or equipment in his examination of the evidence in regard to the brown discoloration. The Hearing Officer made the definitive statement that upon his visual of the tablets; there was an indication that they had been tampered with by adding cocaine to them. The NYPD's expert and the Hearing Officer did not use any ultraviolet light (special light) in their visual observation to confirm the presence of cocaine. The NYPD's expert and Hearing Officer's visual examination of Plaintiff's evidence are in contradiction with the United States Pharmacopoeia (USP) for visual identification and presence of the substance cocaine. The NYPD did not use any special light test on the Plaintiff's evidence. (See attached). NYPD did not follow any correct protocol.

This Document Supports the Following:

- Plaintiff has shown that the appearance and possible condition of this medication is public record and public information and is in no way a rare occurrence in the field of medicine. (FDA report); FDA reports do show illegal drugs can be in commercially available medication.

- Defendant did, in fact, admit that illegal substances can, in fact, be present in commercially available products that can, in fact, cause a member of the Department to test positive on a Department drug test without the officers or retailer knowledge.

- NTEU v. Von Raab U. S.S. Ct. Employees who test positive could submit evidence of medication that may have affected the result.

- Plaintiff has shown that the stipulated facts are all public information in the United States Pharmacopoeia, the official compendium of the United States Government.

- Plaintiff has shown that the defendant used the stipulated facts to state that the medication did not cause his positive test results.

- Plaintiff has shown that the defendant used the stipulated facts as a cover up stating that the defendants, themselves, have not intentionally discriminated against the Plaintiff, though racial discrimination was applied in finding the Plaintiff guilty.

Thank you for allowing this submission of this information.

Sincerely,

Frank Bettis
335 Edgecombe Avenue
New York, New York 10031
(212) 690-4705

cc: Ms Lisa Grumet (LG61110)
Assistant Corporation Counsel
100 Church Street, room 3-190
New York, New York 10007
(212) 788-1165

Dated: New York, New York
September 11, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK BETTIS,

Plaintiff,

-against-

HOWARD SAFIR, as Commissioner of the New York City Police Department, and The City Of New York, WILLIAM BRATTON, as former Commissioner of the New York City Police Departent, MAYOR RUDOLPH W. GIULIANI,

Defendants,

MICHAEL B. MUKASEY, U.S.D.J.

This Court by opinion and order dated September 15, 2000 granted defendants' motion for summary judgment and dismissed the above-captioned case, in which plaintiff alleges that he was the victim of race-based discrimination against him when he was dismissed and a police officer after testing positive for cocaine. The United States Court of Appeals for the Second Circuit dismissed plaintiff's Appeal on February 14, 2001 and denied plaintiff's notice to reinstate his appeal on May 30, 2001. A year after this case was dismissed by this Court, plaintiff has filed a motion for reconsideration of that decision, alleging that a Hispanic officer tested positive five years before plaintiff's case and was not dismissed. Plaintiff argued that this evidence was withheld on discovery, and that such conduct warrants relief under fed. R. Civ. P. 60 (b). He also seeks to have other allegations added to the record, with no indication of why they were not added earlier.

Plaintiff's motion is denied as facially insufficient, and the Clerk of the Court is directed not to accept any further submissions from plaintiff in this action, which remains closed.

SO ORDERED:

Dated: New York, New York
September 24, 2001

Michael B. Mukasey,
U.S. District Judge

UNITED STATES DISTRICT COURTHOUSE
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET
(Ordered by DOCUMENT NO.)

M10-468

Date	Document #	Proceeding
09/21/01	20	IN THE MATTER OF THE EXTENSION OF TIME FOR FILING NOTICES OF APPEAL & OTHER PAPERS PURS. TO RULE 26 (A) OF THE FRCP: Fld Order . . . any deadline for filing in the USDC, SDNY a a notice of appeal to the Court of Appeals for the 2nd Crct. After 9/10/01 and before 9/26/01, is extended to 9/26/01. Any N/A received by The District Court after 9/10/01 and prior to 9/26/01 is deemed filed on 9/26/01. Similarly, any deadline for the filing of any other paper in a case pending in this Court between 9/10/01 and prior to 9/26/01 is deemed filed on 9/26/01. The Clerk of the Court is instructed to promptly deny as moot any motion for an extension that is obviated by the effect of this order. Such a denial shall be accompanied by a copy of this order. Any motion for an extension beyond the times provided by this order should be filed promptly. . . Ordered, J. Mukasey.
09/24/01	21	IN RE: ALL PENDING CRIMINAL CASES AWAITING PRELIMINARY EXAMINATION OR THE FILING OF INDICTMENT OR INFORMATION: Fld

Order of Continuance . . . That the request for a 30-day continuance purs. To Fed. R. Crim. P. 5 and Title 18 US Code Sec. 3161 (h) (8) (A) is hereby granted for all cases for which the final date for the holding of a preliminary examination and /or the filing of an indictment or information would otherwise fall on any day from 9/11/01 through 10/1/01, inclusive, and that copies of this order & the affirmation of the AUSA shall be disseminated by the US Atty. For publication, if possible, in the New York Law Journal. Ordered, J. Mukasey, dtd 9/17/01. With Attached AFFIRMATION by Alan Kaufman in support of application for an order of continuance. . .

Rev. 01/03/02